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BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION
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IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY – APPLICATION FOR
AUTHORIZATION TO ACQUIRE POWER
PLANT

DOCKET NO. E-01345A-06-0464

APS'S RESPONSE IN OPPOSITION
TO APPLICATION FOR LEAVE TO
INTERVENE

I. INTRODUCTION

Arizona Public Service Company ("APS" or "Company") opposes the Application for Leave to Intervene filed by Mesquite Power, L.L.C, Southwestern Power Group II, L.L.C., and Bowie Power Station, L.L.C. ("Applicants"). Not only do Applicants mischaracterize the Company's Application for Authorization to Acquire Power Plant ("APS Application"), as well as Decision No. 67744 (April 7, 2005), but they have failed to meet their burden for intervention under Arizona Corporation Commission ("Commission") rule A.A.C. R14-3-105.

Applicants make much ado about their interpretation of the Settlement adopted in Decision No. 67744 and quote in their entirety Paragraphs 74 and 75 from the Settlement in an apparent attempt to make the APS Application more than it is and thereby broaden the issues and delay the Commission's timely decision. Applicants ignore the key provision of the Settlement expressed in Paragraph 76:

Nothing in this section shall be construed as relieving APS of its existing obligation to prudently acquire generating resources, *including but not limited to seeking the above authorization to self-build a generating resource or resources prior to 2015.* (emphasis added)

1 Paragraph 76 expressly anticipated that self-build may be the most reasonable approach in some
2 circumstances, and reflects the underlying intent of the Settlement and Decision No. 67744, *i.e.*, to
3 provide the most reliable and economic resources for the benefit of ratepayers. As explained in more
4 detail in this response, the Company's RFP process is a valuable component in achieving that goal,
5 and the APS Application is entirely consistent with the letter and spirit of Decision No. 67744.

6 7 **II. DISCUSSION**

8 **A. The Standard for Intervention in Commission Proceedings**

9 The Commission's rules clearly spell out the requirements for intervention in
10 Commission proceedings. Under those rules, intervention is to be granted only if the party seeking
11 intervention in a Commission proceeding demonstrates both that they would be "*directly and*
12 *substantially affected by the proceeding*" and that the granting of intervention will not unduly
13 broaden the issues to be determined.¹ Like the rules governing permissive intervention in judicial
14 proceedings, Rule R14-3-105 is based on a sound policy of carefully balancing the interests of those
15 desiring to participate in a proceeding with the public interest in ensuring a timely, efficient and cost
16 effective determination of matters brought before the forum.

17 Intervention by parties with tangential interests and issues will inevitably add time and
18 expense to a proceeding. This is why the Commission's rule and underlying policy for intervention
19 correctly establishes a standard for intervention. That standard requires a party have an interest that
20 will be directly and substantially affected by the outcome of the proceeding and that intervention will
21 not unduly broaden the issues to be considered. Persons unable to establish such an interest are
22 provided ample opportunities to be heard through public processes; they simply are not accorded the
23 status that allows them to make formal motions and participate in the discovery process. *See A.A.C.*
24 *R14-3-105(C).*

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27
28 ¹ See A.A.C. R14-3-105(A) and (B). See also July 10 Procedural Order, at 2-3.

B. Applicants' Fail to Make the Required Showing for Intervention

While Applicants' Application demonstrates that they have a desire to directly influence, if not control, the outcome of APS's resource procurement efforts for Yuma, it falls far short of establishing any legitimate direct and substantial interest they have in the Commission's decision on the APS Application. Contrary to Applicants' statement that the Company is engaging in some sort of effort to vitiate the Settlement and Decision No. 67744, APS's RFP process and Application further the clear intent underlying the public procurement process.

The lack of any substantive basis for intervention seems to suggest that Applicants believe they should be granted intervention "as a matter of right," a position that is contrary to the policy of ensuring timely and efficient processes, and contrary to the very purpose of Commission Rule A.A.C. R14-3-105.² Because Applicants' request fails to make any colorable argument in support of that standard, their Application should be denied.³

The prejudice to APS and its customers in Yuma that will result from the undue delay that Applicants' intervention will cause (as clearly demonstrated by their dilatory Motion to Dismiss), together with the additional burden on the Company and Commission, weigh heavily against intervention. Applicants have not alleged, much less demonstrated, that their participation in the proceeding will provide any material assistance to the Commission in its consideration of the APS Application that cannot be provided by Staff or through the Commission's public participation process. Apparently assuming that they are entitled to intervene as a matter of right (contrary to the Commission's rules), Applicants' make only a general and unsupported assertion that they have a direct and substantial interest in the proceeding. Applicants do not allege that they were participants

² See Procedural Order, Docket No. W-01445A-06-0199 (July 10, 2006) ("July 10 Procedural Order") (denying intervention because applicant would unduly broaden the scope of the proceeding and failed to demonstrate that it would be directly and substantially affected by the proceeding).

³ Applicants' Motion to Dismiss Application, or, In the Alternative, Schedule Procedural Conference ("Motion to Dismiss") repeats many of the same unsupported claims set forth in their Application for Leave to Intervene. If the Commission agrees, however, that Applicants have failed to meet the requirements for intervention, Applicants' Motion to Dismiss would be moot and the Company therefore is not responding to Applicants' Motion to Dismiss in this response. If Applicants are granted intervention despite their failure to meet the requirements of A.A.C. R14-3-105, the Company will respond to the Motion to Dismiss within a reasonable time consistent with the Commission's rules and the Arizona Rules of Civil Procedure 24(d). See A.A.C. R14-3-106.K. The Company notes in this response only that the Motion to Dismiss also should be denied, as it is a clear attempt to delay the proceeding and gain access to competitively sensitive information.

1 in the Company's Request for Proposals ("RFP") processes or that the process that led to the APS
2 Application was conducted in an unfair or unreasonable manner. They do not assert (nor could they)
3 that they submitted any proposal to APS that would be competitive with the options outlined in the
4 APS Application.⁴

5 Applicants also offer no hint as to how their participation in this proceeding would assist the
6 Commission in reaching a timely and efficient decision or enhance the competitiveness of the
7 proposals selected by the Company. Indeed, Applicants' proposed Motion to Dismiss alone provides
8 ample evidence that the Applicants simply seek to unduly expand the issues and delay the outcome of
9 the proceeding.

10 Instead of offering any real basis for intervention, Applicants selectively cite portions of the
11 Settlement adopted by the Commission in Decision No. 67744 and assert without any foundation that
12 the Company has failed to meet those selected portions. The confidential information provided to the
13 Commission, however, fully satisfies the requirements cited by the Applicants. Moreover, amongst
14 all of the language cited in Applicants' pleadings from the Settlement, conspicuous by its absence is
15 even a passing reference to Paragraph 76 of the Settlement:

16 Nothing in this section shall be construed as relieving APS of its existing obligation
17 to prudently acquire generating resources, *including but not limited to seeking the*
18 *above authorization to self-build a generating resource or resources prior to 2015.*
(emphasis added)

19 The clear intent of Paragraph 76 is to *require* the Company to seek Commission approval when the
20 market is unable to provide competitively priced generating resources to meet the needs of the
21 Company's customers. The APS Application does precisely that.

22 1. APS's RFP Process

23 As described in the APS Application, APS held a public RFP that sought resources to
24 meet its customers' energy demand throughout the Company's service territory (the "Reliability
25 RFP"). Through that Reliability RFP, and an RFP for renewable resources, both of

26 ⁴ It is particularly telling that the Company has not received any complaints, including from any of the Applicants,
27 that the Company's RFP process failed to give all participants an equal opportunity to participate. Instead, it appears that
28 the Applicants' only real complaint is that, assuming they submitted a proposal that could meet the needs of the
Company's customers in Yuma, they were not selected.

1 which had broad participation from third parties,⁵ the Company secured approximately 1300 MW of
2 generation resources to meet those needs, all through purchased power agreements ("PPAs") with
3 third parties. The results of those RFPs clearly demonstrate that when the market is able to provide
4 economic resources to meet customers' needs, the Company will secure such resources.⁶

5 After conducting the Reliability RFP and securing approximately 1150 MW of resources
6 through PPAs with third parties, the Company decided to seek additional economic resources from
7 the market by conducting a second RFP focusing on meeting its Yuma requirements. As the
8 Company also described in its application, because the needs for Yuma cannot be adequately
9 addressed by resources located outside of the load pocket, the Company clearly stated in the RFP that
10 only those proposals that could offer the reliability assurance of a resource internal to the load pocket
11 would be considered competitive.

12 Open invitations to participate in the Yuma RFP were widely disseminated to interested
13 parties, including the Applicants. Persons participating in the initial Reliability RFP solicitation were
14 invited to refresh their proposals for the Yuma RFP, and many other parties were invited to submit
15 new proposals to meet the Yuma need. Neither the Company, nor to our knowledge the Commission,
16 has received any complaint that the solicitation of proposals for Yuma (*i.e.*, the same process the
17 Company used for the Reliability RFP) failed to give all participants an equal opportunity to
18 participate. In fact, Applicants' Application does not make any allegation that the Company's RFP
19 process prevented them from participating or impaired their ability to submit a competitive proposal.
20 The fact that they elected not to participate or failed to submit a competitive proposal should not
21 provide any basis for interfering with the Commission's decision on the APS Application.

22
23 ⁵ Twenty-nine parties submitted proposals in the Company's Reliability RFP and eleven of those were eligible for
24 the Yuma RFP. Twelve parties participated in the Renewable RFP.

25 ⁶ The Company's goal through its RFP process is to obtain the most *economic* resources, consistent with its
26 obligation to its customers as expressed in Decision No. 67744 and other appropriate considerations. Applicants
27 apparently believe, however, that APS is required to secure all resources through 2015 from third parties if they are
28 willing to sell the Company power, regardless of the price or its impact on customers. Paragraph 76 of the Settlement
makes it clear that was not the intent of Decision No. 67744. Instead, the intent of Decision No. 67744 was to benefit
customers, and the APS RFP process is accomplishing that goal. The APS Application in this proceeding is entirely
consistent with Decision No. 67744 and APS is not seeking to modify that Decision through this proceeding.

1 The Company's solicitation for Yuma resources resulted in the submittal of numerous
2 proposals, the details of which provided the Company with ample indications of the market price for
3 various options for energy supply. The proposals received and the Company's selection matrix have
4 been submitted to Commission's Utilities Division Staff as part of the APS Application and will
5 provide the Commission with the same indications regarding market prices. The economic and
6 operational metrics of those proposals largely speak for themselves. Consistent with the requisite
7 confidentiality commitments to participants in the RFP process, information relating to specific
8 proposals was submitted under confidentiality to the Commission's Utilities Division Staff to validate
9 the Company's selection process and economic evaluation. Generally, however, the proposals fell
10 into two categories: (i) ownership acquisition (*i.e.*, self-build) proposals; and (ii) power purchase
11 agreements ("PPAs"), which provided the Company with a price for power over a specified term with
12 ownership of the facility retained by a third party.

13 2. APS's Application for Authorization to Acquire Power Plant

14 The APS Application is straightforward and supported by the information essential to
15 ensure the Commission that an open and fair RFP process was conducted in accordance with
16 Decision No. 67744, and Applicants' attempts to mischaracterize the Company's request should be
17 soundly rejected. As the APS Application indicated, the PPA proposals were consistently less
18 economic than the self-build proposals, a fact that is amply demonstrated by the detailed information
19 provided by the Company to the Commission in connection with the APS Application. The APS
20 Application asks the Commission to authorize an acquisition of an ownership interest in a newly
21 constructed facility in Yuma, *i.e.*, a self-build proposal, either through an agreement with a developer
22 or through contracts directly between the Company and vendors and contractors. Under Decision
23 No. 67744, the Company must make the same showing to pursue either alternative, both of which are
24 deemed to be "self-build" under the Decision. Consequently, the Company has asked for
25 authorization to self-build through either option, depending on which option ultimately turns out to be
26 the most economic for the Company, and therefore its customers.

27 The Company's request is for this Commission to review the resource options presented and
28 authorize the Company to use its best efforts to pursue the one that will provide the most benefit to

1 our customers. In order to obtain a firm price for either alternative, the Company must be prepared to
2 make a firm commitment within a reasonable time period. The Company's request is entirely
3 consistent with the letter and intent of the Settlement and Decision No. 67744 and does not ask for
4 anything that is not permitted under that Decision. APS has not sought in this proceeding, nor does
5 the Commission need to contemplate, any action that would "directly and substantially" affect
6 Applicants, such as a modification or amendment of the Settlement or Decision.

7 3. Applicants' Request for Intervention is not Well Founded

8 Applicants' assertion that their intervention would not unduly broaden the issues is
9 disingenuous. As a party, Applicants would have at their access the full array of procedural and
10 discovery options that will allow an exponential increase in time and expense for all parties and the
11 Commission. This is initially quite clearly evidenced by Applicants' Motion to Dismiss. There can
12 be no doubt that Applicants' intervention would expand the issues well beyond the scope of the
13 Application to issues related to Decision No. 67744 and its impact on the Company's need to serve,
14 issues that were finalized in Decision No. 67744 and about which the Company is not asking the
15 Commission to decide.

16 Applicants' Application contains the kind of unfounded allegations and mischaracterizations
17 that give a hint of the type of tactics they may employ if given the status of a party in this proceeding.
18 For example, Applicants state, without support, that APS is "proposing to completely ignore" the
19 PPA proposal. It is clear from APS's Application that no proposal has been "ignored." As the
20 Company's Application makes clear, however, APS's evaluation is based on reliability and cost, *i.e.*,
21 for the benefit of customers, not from the narrow perspective of a small but vocal segment of market
22 participants. Second, Applicants state that APS's Application asks this Commission to authorize in
23 advance to choose between a developer proposal to build a power plant for the Company, or to "self-
24 build." Applicants have ignored the plain fact that the Company's Application is asking the
25 Commission to authorize it to pursue only a self-build option through one of two means, *i.e.*, either
26 through a development contract or by directly contracting with contractors and vendors. This sort of
27 disregard for detail will not enhance the timing or quality of any decision the Commission makes in
28 this proceeding.

1 Moreover, Applicants' intervention in this proceeding would give them another opportunity to
2 influence the outcome of a process in which they either chose not to participate or in which they
3 elected to submit a proposal that did not represent a low cost alternative for customers. Having had at
4 least two bites at the apple through the Company's Reliability and Yuma RFP processes, the
5 Applicants now seek a third bite through intervention. They now want to be privy to the
6 competitively sensitive analysis and ultimate selection of resources for APS. Decision No. 67744
7 clearly never contemplated that parties such as Applicants would be making such decisions for the
8 Commission and APS's customers. There is nothing in the wording of either Decision No. 67744 or
9 the Settlement it approved that suggests that Applicants would be entitled to participate in any
10 manner in the evaluation or selection of proposals. Applicants' involvement in Arizona resource
11 decisions should focus on providing the lowest cost resources through competitive bidding, rather
12 than attempting to use procedural means to add unnecessary cost and time to the process
13 contemplated by Decision No. 67744 and the Settlement.

14 Applicants' arguments mistakenly suggest that the intent underlying the Settlement was that
15 APS must demonstrate to *Applicants'* satisfaction that there is virtually no way, regardless of the cost
16 to customers, to obtain necessary resources except through a self-build option. That is not the case
17 and their level of satisfaction with the analysis and the outcome of the RFP is subordinate to the
18 interests of customers, as well as irrelevant to this proceeding. Applicants' argument does not
19 contain an acknowledgement of or reference to the need for APS to select the best alternative from a
20 customer perspective. In fact their only reference to cost is to their cost, contained in the following
21 statement:

22 Mesquite/SWPG/Bowie have invested many years of effort and *expended substantial*
23 *sums* through their participation in proceedings before the Commission where their
24 goal was to facilitate the development and maintenance of a viable competitive
25 wholesale electric market in Arizona. (Applicants' Application at page 5, lines 13-16)

26 While we can all appreciate the "substantial sums" all parties (including APS) have spent (and
27 continue to spend) to address Arizona's resource needs, such efforts do not entitle Applicants to any
28 special status in this proceeding. Denying the Applicants' request for intervention will reinforce the

1 proposition that the interests of customers in reliable and economic resources will not be
2 subordinated to the narrow interests of a few market players.

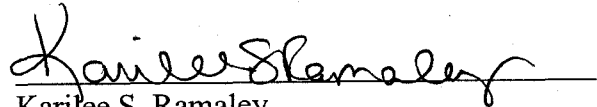
3 As demonstrated in the various filings APS has made with this Commission, the public
4 procurement process undertaken pursuant to Decision No. 67744 has provided a wide array of market
5 proposals to meet resource needs. This holds true in the RFP for Yuma resources. Freely granting
6 intervention could actually have a dampening effect on future RFP's. If Applicants are granted
7 intervention on such weak grounds, any competitor taking the time and incurring the expense to
8 submit a highly competitive proposal would also need to assume that it must incur the additional time
9 and expense to engage legal counsel to defend any successful proposal against collateral attacks by a
10 disappointed participant. Granting intervention based on an argument such as the one offered by
11 Applicants would invite endless and frivolous attempts by parties who were not selected as the
12 winning bidder in an RFP, or in fact may not have even been participants. Such a result would only
13 harm the RFP process by chilling future participation, and that clearly would harm customers.

14 III. CONCLUSION

15 Applicants' Application contains no credible evidence that they have a direct and substantial
16 interest in the outcome of this proceeding. It is clear that their participation would unduly broaden
17 the issues to be considered in reaching a decision in this matter. In addition, it would be
18 fundamentally unfair to allow the Applicants to enter as parties to the proceeding, thereby securing an
19 inside track on access to sensitive information and influencing the outcome of any decision in this
20 matter. Such participation will not assist this Commission in reaching a sound decision, nor benefit
21 the reasonable expectations of customers in a timely and cost effective resource procurement
22 decision. There is no reason to believe that this Commission is incapable of making a sound decision
23 based on the extensive evidence provided to it confidentially without adding Applicants as parties.
24 Applicants' intervention should be denied.

1 RESPECTFULLY SUBMITTED this 10th day of August, 2006.

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3 PINNACLE WEST CAPITAL CORPORATION

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9 The original and 13 copies of the foregoing were
10 filed this 10th day of August, 2006 with:

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